

EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	James H. Bilbray	
	(Name of defendant) (as Member	of Defense Base Closure and Realignment Commission
	(Title)	(Name of business)
0.00		(or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has ict Court for the Eastern District
of Mis	souri and has been assigned	docket number 4:05CV01387 JCH
the cos of the w	t of serving you with a judicial summ aiver within30days after the date	rom the court, but rather my request that you sign and return the enclosed waiver of service in order to save ons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy edesignated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed se return) for your use. An extra copy of the waiver is also attached for your records.
with t	the court and no summor e waiver is filed, except you will not b	lest and return the signed waiver to the undersigned, it will be filed as will be served on you. The action will then proceed as if you had been served on the eobligated to answer the complaint before 60 days from the date designated below as the date on which is from that date if your address is not in any judicial district of the United States).
Rules of address	of Civil Procedure and will then, to th	ne time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal e extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are ce. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
l affirm	n that this request is being sen	it to you on behalf of the plaintiff, the ast day of Avens, 2005.
		Signature of Plaintiff's Attorney or Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaintiff To Complete Gray Area * *			
1Q.	Box 899 Jefferson City, Missouri 65102 They or unrepresented plaintiff)		
I acknowledge receipt of your re	quest that I waive service of a summons in the action of:		
Case Caption: Misson	uri ex rel. Nixon v. Rumsfeld et al.		
Case Number: 4:050	V01387 JCH		
	he Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this ch I can return the signed waiver to you without cost to me.		
lagree to save the cost of service of a s behalf I am acting) be served with	summons and an <mark>additional copy of the complaint in this lawsuit by not</mark> requiring that I (or the entity on whose th judicial process in the manner provided by Rule 4.		
I (or the entity on whose behalf I am ac objections based on a defect in	cting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for the summons or in the service of the summons.		
lunderstand that a judgment may be en upon you within 60 days after A	ntered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served ugust 31, 2005		
	(Date Waiver sent) ne request was sent outside the United States.		
DEF	ENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE		
Date	Print name		
	Signature		
as(Officer or Agent)	of (Corporation or Association)		
	Address		
	City, State, Zip Code		



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

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TO:	James H. Bilbray			
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the cost of the west of the we	stofserving you with a judicial survaiver within _30_days after the ope (or other means of cost u comply with this rethe court and no summer waiver is filed, except you will not suit the waiver is filed, except you will not suit the court and no summer waiver is filed, except you will not suit the court and not suit the	on from the court, but rather my request that you sign and return the enclosed waiver of service in order to save nmons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed afree return) for your use. An extra copy of the waiver is also attached for your records. quest and return the signed waiver to the undersigned, it will be filed nons will be served on you. The action will then proceed as if you had been served on the ot be obligated to answer the complaint before 60 days from the date designated below as the date on which		
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EASTERN DISTRICT OF MISSOURI

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or within 90 days after date	(Date Waiver sent) if the request was sent outside the United States.		
	DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE		
Date	Print name		
	Signature		
as(Officer or Agent)	of(Corporation or Association)		
	Address		
	City, State, Zip Code		

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

ν.

DONALD H. RUMSFELD, et al.

4:0°5° 0 1 387 JCH

and serve:

Catherine T. Hanaway

U.S. Attorney

111 South 10th St., 20th Floor

St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales

Attorney General of the U.S. 950 Pennsylvania Ave., NW

James H. Bilbray Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St.,

Ste. 600 Arlington, VA 22202 Washington, DC 20530-0001

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri P. O. Box 899

Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663

Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General

and the state of t

DATE

(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons in a Civil A	Action		
	RETURN OF SE	RVICE	
Service of the Summons and Co	mplaint was made by met	DATE	
NAME OF SERVER (PRINT)		TITLE	
Check one box below to indicate	appropriate method of service		
Served personally upon the d	iefendant. Place where serve	d:	
Left copies thereof at the defer discretion then residing therei Name of person with whom t	n.		a person of suitable age and
Returned unexecuted:			
Other (specify):			
	STATEMENT OF SER	VICE FEES	
TRAVEL	SERVICES		TOTAL
	DECLARATION OF	eEDVED	
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.			
Executed on	Sig	nature of Server	
	Add	ress of Server	
·			
·			

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON,)
Attorney General of the State of Missouri,) Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official)
•)
capacity as Secretary of Defense of the	,
United States; ANTHONY J. PRINCIPI,) `
in his official capacity as Chairman of the	,
Defense Base Closure and Realignment	?
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.)
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as)
members of the Defense Base Closure and)
Realignment Commission,)
,	·)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- 6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States

 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.

 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations.

 Since 1996, its deployments have included the following: Operation PROVIDE

 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL

Assistant Attorney General

Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General

Missouri Bar No. 56413

REX M. BURLISON Assistant Attorney General Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Phillip E. Coyle	
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(Officer or Agent)

United States District Court

EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaintiff To Complete	NOTICE TO DEFENDANT(S) e Gray Area * *
	P.O. Box 899 Jefferson City, Missouri 65102 tiff's attorney or unrepresented plaintiff)
I acknowledge receipt c	of your request that I waive service of a summons in the action of:
Case Caption:	Missouri ex rel. Nixon v. Rumsfeld et al.
Case Number:	4:05CV01387 JCH
in the United States District instrument, and a mear	Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this his by which I can return the signed waiver to you without cost to me.
lagree to save the cost of se behalf I am acting) be s	ervice of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose served with judicial process in the manner provided by Rule 4.
I (or the entity on whose bel objections based on a (half I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for defect in the summons or in the service of the summons.
Tunderstand that a judgment	t may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served s after August 31, 2005
	(Date Waiver sent) date if the request was sent outside the United States.
	DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature

City, State, Zip Code

(Corporation or Association)

Address



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Phillip E. Coyle	
,	(Name of defendant) (as Member	of Defense Base Closure and Realignment Commission
	(Title)	(Name of business)
		u (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has rict Court for the Eastern District
of Mis	souri and has been assigned	docket number 4:05cv01387 эсн
the cost of the well enveloped if your with	stofserving you with a judicial summon valver within _30_days after the date ope (or other means of cost-from comply with this requite court and no summon the court and the court	from the court, but rather my request that you sign and return the enclosed waiver of service in order to save ons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy eldesignated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed ser return) for your use. An extra copy of the waiver is also attached for your records. Lest and return the signed waiver to the undersigned, it will be filed the served on you. The action will then proceed as if you had been served on the date obligated to answer the complaint before 60 days from the date designated below as the date on which
		s from that date if your address is not in any judicial district of the United States).
Rules addres	of Civil Procedure and will then, to t	the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal ne extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are rice. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
1 affin	n that this request is being se	nt to you on behalf of the plaintiff, this 31 ST day of Autous, 20 <u>05</u> . Signature of Plaintiff's Attorney or Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the weather.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Pla	NOTICE TO DEFENDANT(S) * * Plaintiff To Complete Gray Area * *		
To:	Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102 (Name of plaintiff's attorney or unrepresented plaintiff)		
1 ackr	nowledge receipt of your request that I waive service of a summons in the action of:		
	Case Caption: Missouri ex rel. Nixon v. Rumsfeld et al.		
	Case Number: 4:05cv01387 JCH		
	United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this ment, and a means by which I can return the signed waiver to you without cost to me.		
	e to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose f I am acting) be served with judicial process in the manner provided by Rule 4.		
100000000000000000000000000000000000000	e entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for tions based on a defect in the summons or in the service of the summons.		
lunde upon	stand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served you within 60 days after August 31, 2005		
	(Date Waiver sent) hin 90 days after date if the request was sent outside the United States.		

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date	Print name
	Signature
as(Officer or Agent)	of (Corporation or Association)
	Address
	City, State, Zip Code

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v

DONALD H. RUMSFELD, et al.

CASE NUMBER: 4387JCH

Catherine T. Hanaway

U.S. Attorney

111 South 10th St., 20th Floor

St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

and serve:

Alberto Gonzales

Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

2 0 0 (13-10 1130 1031 01 1031 1131)

Philip E. Coyle Member of the Defense Base Closure and Realignment Commission 2521 c. Clark St.

2521 S. Clark St. Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General P. O. Box 899 Jefferson City, MO 65102

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General

an answer to the complaint which is herewith served upon you, within _______ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATE

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri,)) Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official capacity as Secretary of Defense of the United States; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; JAMES H. BILBRAY; PHILIP E. COYLE; HAROLD W. GEHMAN, JR.; JAMES V. HANSEN; JAMES T. HILL; LLOYD W. NEWTON; SAMUEL K. SKINNER; and SUE ELLEN TURNER, in their official capacity as members of the Defense Base Closure and Realignment Commission,	
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- 6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States

 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.

 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel
 (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time)
 Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations.

 Since 1996, its deployments have included the following: Operation PROVIDE

 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- 28 Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and — if the State prevails on even one of these Counts — that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL Assistant Attorney General Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General Missouri Bar No. 56413

REX M. BURLISON Assistant Attorney General Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff

* Tours

United States District Court

EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Harold W. Gehman, Jr.	
10.	(Name of defendant) (as Member	of Defense Base Closure and Realignment Commission
	(Title)	(Name of business)
		u (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has rict Court for the Eastern District
of Mis	souri and has been assigned	docket number 4:05cv01387 JCH
the cos of the we envelo	stofserving you with a judicial summ vaiver within _30 _days after the date ope (or other means of cost-frou u comply with this requ the court and no summo	from the court, but rather my request that you sign and return the enclosed waiver of service in order to save nons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy be designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed ee return) for your use. An extra copy of the waiver is also attached for your records. Lest and return the signed waiver to the undersigned, it will be filed ins will be served on you. The action will then proceed as if you had been served on the
datet this n	ne waiver is filed, except you will not botice is sent (or before 90 day	be obligated to answer the complaint before 60 days from the date designated below as the date on which is from that date if your address is not in any judicial district of the United States).
Rules addres	of Civil Procedure and will then, to th	the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal he extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are rice. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
l affir	n that this request is being ser	nt to you on behalf of the plaintiff, this 315 day of NGUSE, 2005. Signature of Plaintiff's Attorney or

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the

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EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

I acknowledge rece Case Capti Case Numb	ion P.O. Box 899 Jefferson City, Missouri 65102 laintiff's attorney or unrepresented plaintiff) ipt of your request that I waive service of a summons in the action of: on: Missouri ex rel. Nixon v. Rumsfeld et al. per: 4:05CV01387 JCH
Case Capti Case Numb in the United States Di	on: Missouri ex rel. Nixon v. Rumsfeld et al.
Case Numb	
in the United States Di	per: 4:05CV01387 JCH
Calabaration and the contract of the calabaration of the calabarat	strict Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this neans by which I can return the signed waiver to you without cost to me.
	of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose be served with judicial process in the manner provided by Rule 4.
	e behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for a defect in the summons or in the service of the summons.
	ment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served days after August 31, 2005
	(Date Waiver sent) ter date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date	Print name
	Signature
as(Officer or Agent)	of (Corporation or Association)
	Address
	City, State, Zip Code



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Harold W. Gehman, Jr	
	(Name of defendant) (as Member	of Defense Base Closure and Realignment Commission
	(Title)	(Name of business)
		rou (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has strict Court for the Eastern District
of Mis	souri and has been assigne	d docket number 4:05cV01387 JCH
the cos of the v	tofserving you with a judicial sum aiver within30days after the d	n from the court, but rather my request that you sign and return the enclosed waiver of service in order to save mons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy ale designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed free return) for your use. An extra copy of the waiver is also attached for your records.
lf yo	u comply with this red	quest and return the signed waiver to the undersigned, it will be filed
dateti	ne waiver is filed, except you will no	ons will be served on you. The action will then proceed as if you had been served on the the obligated to answerthe complaint before 60 days from the date designated below as the date on which ays from that date if your address is not in any judicial district of the United States).
Rules addres	of Civil Procedure and will then, to	in the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal of the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are ervice. In that connection, please read the statement concerning the duty of parties to waive the service of the effoct of the waiver form.
I affirm	n that this request is being s	ent to you on behalf of the plaintiff, this 315 day of Nous , 200 .
		Signature of Plaintiff's Attorney or Unrepresented Plaintiff

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EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaintiff To Complete	NOTICE TO DEFENDANT(S) c Gray Area * *
1 W.	P.O. Box 899 Jefferson City, Missouri 65102 iff's attorney or unrepresented plaintiff)
I acknowledge receipt o	f your request that I waive service of a summons in the action of:
Case Caption:	Missouri ex rel. Nixon v. Rumsfeld et al.
Case Number:	4:05CV01387 JCH
	Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this is by which I can return the signed waiver to you without cost to me.
	rvice of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose erved with judicial process in the manner provided by Rule 4.
	half I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for defect in the summons or in the service of the summons.
Lunderstand that a judgment upon you within 60 days	may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served a fiter. August 31, 2005
	(Date Waiver sent) date if the request was sent outside the United States.
Date	DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE Print name
	Signature
as(Officer or Agen	of nt) (Corporation or Association)

City, State, Zip Code

(Corporation or Association)

Address

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIKON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4:000VUL387JCH

and serve:

Catherine T. Hanaway

U.S. Attorney

111 South 10th St., 20th Floor

St. Louis, Mo 63102

TO: (Name and address of defendant)

Harold W. Gehman, Jr.

and serve:

Alberto Gonzales

Attorney General of the U.S. 950 Pennsylvania Ave., NW

Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St.,

Ste. 600

YBY DEPUT

CIFRE

Arlington, VA 22202

Washington, DC 20530-0001

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri P. O. Box 899

Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General

DATE

AO 440 (Rev. 10/93) Summons in a Civil Action RETURN OF SERVICE			
Service of the Summons and Complaint was made by met		DATE	
NAME OF SERVER (PRINT)		TITLE	
Check one box below to indicate appropriate method of service			
Served personally upon the defendant. Place where served:			
Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:			
Returned unexecuted:			
Other (specify):			
	STATEMENT OF SERVI	CE FEES	
TRAVEL	SERVICES		TOTAL
	DECLARATION OF SE	RVER	1
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.			
Executed on			
Date	Signa	ture of Server	
Uale		ture of Server ss of Server	
Date			
Uale			
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Uale	Addre	ss of Server	

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON,)) Civil Action:
Attorney General of the State of Missouri,) Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official)
capacity as Secretary of Defense of the)
United States; ANTHONY J. PRINCIPI,)
in his official capacity as Chairman of the)
Defense Base Closure and Realignment)
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.)
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as)
members of the Defense Base Closure and)
Realignment Commission,)
-)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- 6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States
 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.
 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel
 (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time)
 Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations.

 Since 1996, its deployments have included the following: Operation PROVIDE

 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and — if the State prevails on even one of these Counts — that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL

Assistant Attorney General Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General Missouri Bar No. 56413

REX M. BURLISON Assistant Attorney General Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff

* * *

United States District Court

EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	James W. Hansen	
10.	(Name of defendant) (as Member of	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
	ithas been commenced againstyou(o filed in the United States District	or the entity on whose behalfyou are addressed). A copy of the complaint is attached to this notice. It has Court for the Eastern District
of Mis	souri and has been assigned do	cket number 4:05CV01387JCH
the cost of the war enveloped in the the war the the war the the war t	t of serving you with a judicial summons aiver within _30 _ days after the date do ope (or other means of cost-free u comply with this reques the court and no summons e waiver is filed, except you will not be o	In the court, but rather my request that you sign and return the enclosed waiver of service in order to save is and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy esignated below as the date on which this Notice and Request is sent. I endose a stamped and addressed return) for your use. An extra copy of the waiver is also attached for your records. It is and return the signed waiver to the undersigned, it will be filed will be served on you. The action will then proceed as if you had been served on the obligated to answer the complaint before 60 days from the date designated below as the date on which rom that date if your address is not in any judicial district of the United States).
Rules o	f Civil Procedure and will then, to the e	time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are In that connection, please read the statement concerning the duty of parties to waive the service of the strong the waiver form.
l affirm	that this request is being sent to	o you on behalf of the plaintiff, this 31 day of Aug of
	Carle han being being and and a	Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

* * Plaintiff To Complete Gray Are	a * *
To: Paul Wilson P. Co	ey or unrepresented plaintiff)
I acknowledge receipt of your requ	uest that I waive service of a summons in the action of.
Case Caption: St. of	MO. ex. rel. v. Donald Rumsfeld, et al
Case Number: 4:05CVC	01387JCH
	Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this in I can return the signed waiver to you without cost to me.
lagree to save the cost of service of a suit behalf I am acting) be served with	mmons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose judicial process in the manner provided by Rule 4.
	ng) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for e summons or in the service of the summons.
lunderstand that a judgment may be enter upon you within 60 days after Aug	ered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served gust 30, 2005
or within 90 days after date if the	(Date Waiver sent) request was sent outside the United States.
DEFE	NDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature
as(Officer or Agent)	of(Corporation or Association)
	Address
	City, State, Zip Code



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	James W. Hansen (Name of defendant) (as Member of	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
		u (or the entity on whose behalfyou are addressed). A copy of the complaint is attached to this notice. It has rict Court for the Eastern District
of Mis	ssouri and has been assigned	docket number 4:05CV01387JCH
the cor of the v	st of serving you with a judicial summ vaiver within _30_days after the dat	from the court, but rather my request that you sign and return the enclosed waiver of service in order to save nons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy redesignated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed ee return) for your use. An extra copy of the waiver is also attached for your records.
with datet	the court and no summone waiver is filed, except you will not	uest and return the signed waiver to the undersigned, it will be filed ns will be served on you. The action will then proceed as if you had been served on the be obligated to answer the complaint before 60 days from the date designated below as the date on which its from that date if your address is not in any judicial district of the United States).
Rules addres	of Civil Procedure and will then, to t	the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal he extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are rice. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
l affin	m that this request is being se	nt to you on behalf of the plaintiff, this 31 stay of Autority. 2005.
		Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

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EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaintiff To Complete Gray Area	NOTICE TO DEFENDANT(S)
To: Paul Wilson P.O. (Name of plaintiffs attorney	Box 899 JEFFERSON CITY MISSOURI 65/02 or unrepresented plaintiff)
I acknowledge receipt of your reque	est that I waive service of a summons in the action of.
Case Caption: St. of M	O. ex. rel. v. Donald Rumsfeld,et al
Case Number: 4:05CV01	387JCH
in the United States District Court for the E Instrument, and a means by which I	Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this I can return the signed waiver to you without cost to me.
lagree to save the cost of service of a sum	rnons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose udicial process in the manner provided by Rule 4.
	g) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for summons or in the service of the summons.
lunderstand that a judgment may be entered upon you within 60 days after <u>Augu</u>	ed against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served as t 30, 2005
	(Date Waiver sent) request was sent outside the United States.
	DANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature
as(Officer or Agent)	of(Corporation or Association)
(0.11001 0.1 / 901.1.)	Address

City, State, Zip Code

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v

CASE NUMBER:

DONALD H. RUMSFELD, et al.

* · UDUVU1387JCH

and serve:

Catherine T. Hanaway

U.S. Attorney

111 South 10th St., 20th Floor

St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales

Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

James W. Hansen Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St., Ste. 600

Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON, Missouri Bar No. 40804

Assistant Attorney General

P. O. Box 899 Jefferson City, MO 65102

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General

DATE

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attawney Consul of the State of Missouri)) Civil Action:
Attorney General of the State of Missouri,) Civii Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official)
capacity as Secretary of Defense of the)
United States; ANTHONY J. PRINCIPI,)
in his official capacity as Chairman of the)
Defense Base Closure and Realignment)
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.)
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as)
members of the Defense Base Closure and)
Realignment Commission,	,)
)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
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Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
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Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States

 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.

 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel
 (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time)
 Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- The 131th Fighter Wing has been intensely involved in combat operations.
 Since 1996, its deployments have included the following: Operation PROVIDE
 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL Assistant Attorney General Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General Missouri Bar No. 56413

REX M. BURLISON Assistant Attorney General Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	James T. Hill		
	(Name of defendant) (as Member of	of the Defense Base Closure and Relignment Comm.)
	(Title)	(Name of business)	
	suithas been commenced againstyou n filed in the United States Distric	(or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice ct Court for the Eastern District	thas:
of M	issouri and has been assigned d	locket number 4:05CV01387JCH	
the or of the enve	ost of serving you with a judicial summon waiver within _30 _ days after the date of cope (or other means of cost-free ou comply with this request the court and no summons the waiver is filed, except you will not be	om the court, but rather my request that you sign and return the endosed waiver of service in order to an additional copy of the complaint. The cost of service will be avoided if I receive a signer designated below as the date on which this Notice and Request is sent. I enclose a stamped and additional for your use. An extra copy of the waiver is also attached for your receives and return the signed waiver to the undersigned, it will be swill be served on you. The action will then proceed as if you had been served a obligated to answer the complaint before 60 days from the date designated below as the date of from that date if your address is not in any judicial district of the United States	d copy dressed ords. filed on the n which
Ifyou Rules addre	do not return the signed waiver within the s of Civil Procedure and will then, to the	e time indicated, I will take appropriate steps to effect formal service in a manner authorized by the F e extent authorized by those Rules, ask the court to require you (or the party on whose behalf y e. In that connection, please read the statement concerning the duty of parties to waive the servic	Federal you are
l affir	m that this request is being sent	signature of Plaintiff Attorney or Unrepresented Plaintiff	

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

To: Paul Wilson P.O.	Box 899 JEFFERSON CITY, MISSOUR, 65102
	ey or unrepresented plaintiff)
I acknowledge receipt of your requ	uest that I waive service of a summons in the action of
Case Caption: St. of	MO. ex. rel. v. Donald Rumsfeld,et al
Case Number: 4:05cvo	01387JCH
	Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this I can return the signed waiver to you without cost to me.
lagree to save the cost of service of a sur	mmons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose judicial process in the manner provided by Rule 4.
	ng) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for
	e summons or in the service of the summons.
upon you within 60 days after Aug	ered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served gust 30, 2005
or within 90 days after date if the	(Date Waiver sent) request was sent outside the United States.
DEFE	NDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature
as	of
(Officer or Agent)	(Corporation or Association)
	Address



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	James T. Hill	
•	(Name of defendant) (as Member of	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
		ou(or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has trict Court for the Eastern District
of Mis	souri and has been assigned	f docket number 4:05CV01387JCH
the cos of the w envelo	stofserving you with a judicial summawer within30days after the day pe (or other means of cost-fi	Inform the court, but rather my request that you sign and return the enclosed waiver of service in order to save more and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy the designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed ree return) for your use. An extra copy of the waiver is also attached for your records. uest and return the signed waiver to the undersigned, it will be filed
datet	ne waiver is filed, except you will not	Ins will be served on you. The action will then proceed as if you had been served on the be obligated to answer the complaint before 60 days from the date designated below as the date on which ys from that date if your address is not in any judicial district of the United States).
Rules of address	of Civil Procedure and will then, to	the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are vice. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
l affirr	n that this request is being se	ent to you on behalf of the plaintiff, this 312 day of house, 2005 Signature of Plaintiff's Attorney or Unrepresented Plaintiff

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EASTERN DISTRICT OF MISSOURI

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To: Paul Wilson P.O. (Name of plaintiffs attorne	Box 899 JEFFERSON City, MISSOUR, 65102			
I acknowledge receipt of your requ	est that I waive service of a summons in the action of.			
Case Caption: St. of I	MO. ex. rel. v. Donald Rumsfeld,et al			
Case Number: 4:05CV0	1387JCH			
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I (or the entity on whose behalf I am actin objections based on a defect in the	ng) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for e summons or in the service of the summons.			
, lunderstandthat a judgment may be enter upon you within 60 days after <u>Aug</u>	ared against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served gust 30, 2005			
	(Date Waiver sent)			
or within 90 days after date if the request was sent outside the United States. DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE				
Date	Print name			
	Signature			
as(Officer or Agent)	of (Corporation or Association)			
	Address			

City, State, Zip Code

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

ν

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4:000V01387JCH

and serve:

Catherine T. Hanaway U.S. Attorney 111 South 10th St., 20th Floor St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

James T. Hill Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St., Ste. 600 Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON, Missouri Bar No. 40804

Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General P. O. Box 899 Jefferson City, MO 65102

an answer to the complaint which is herewith served upon you, within _______ days after service of this summons upon you, exclusive of the day of service. If you fall to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATE

(BY) DEPUT CLERK

	RETURN OF S	ERVICE	
Service of the Summons and Complaint	was made by met	DATE	
NAME OF SERVER (PRINT)		TITLE	
Check one box below to indicate appropr	iate method of servic	e	
Served personally upon the defendant Left copies thereof at the defendant's discretion then residing therein. Name of person with whom the sum Returned unexecuted:	dwelling house or usu	al place of abode with	a person of sultable age and
	STATEMENT OF SEF	RVIÇE FEES	TOTAL
			t .
	DECLARATION OF	SERVER	
I declare under penalty of perjuinformation contained in the Return of Executed on Date	ury under the laws o	f the United States of	
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information contained in the Return of Executed on	ury under the laws o	f the United States of ment of Service Fees gnature of Server dress of Server	

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General of the State of Missouri,	Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official)
capacity as Secretary of Defense of the)
United States; ANTHONY J. PRINCIPI,)
in his official capacity as Chairman of the)
Defense Base Closure and Realignment)
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.)
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as	
members of the Defense Base Closure and)
Realignment Commission,)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

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- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
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 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
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district and a substantial part of the property that is the subject of the action is situated within this judicial district.

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- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations.

 Since 1996, its deployments have included the following: Operation PROVIDE

 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents ... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL Assistant Attorney General Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General Missouri Bar No. 56413

REX M. BURLISON Assistant Attorney General Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Lloyd W. Newton	
	(Name of defendant) (as Member of	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
		(or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has ct Court for the Eastern District
of Mis	souri and has been assigned o	locket number 4:05CV01387JCH
the cos of the w	t of serving you with a judicial summo aiver within _30 _ days after the date	om the court, but rather my request that you sign and return the endosed waiver of service in order to save ans and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy designated below as the date on which this Notice and Request is sent. I endose a stamped and addressed e return) for your use. An extra copy of the waiver is also attached for your records.
with 1 dateth	the court and no summon e waiver is filed, except you will not be	est and return the signed waiver to the undersigned, it will be filed s will be served on you. The action will then proceed as if you had been served on the obligated to answer the complaint before 60 days from the date designated below as the date on which from that date if your address is not in any judicial district of the United States).
Rules o	of Civil Procedure and will then, to the	etime indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are extent authorized by those read the statement concerning the duty of parties to waive the service of the poot of the waiver form.
l affirm	n that this request is being sen	to you on behalf of the paintiff, this 315 day of 10605
		Signature of Plaintiff's Attorney or Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, falls to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S) * * Plaintiff To Complete Gray Area * *			
To: Paul Wilson P. O. Box 899 JEFFenson CITY, MISSURI 65102 (Name of plaintiffs attorney or unrepresented plaintiff)			
I acknowledge receipt of your request that I waive service of a summons in the action of.			
Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al			
Case Number: 4:05CV01387JCH			
in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.			
I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.			
I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.			
lunderstand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005			
(Date Waiver sent)			
or within 90 days after date if the request was sent outside the United States.			
DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE			

Date	Print name
	Signature
as	of
(Officer or Agent)	(Corporation or Association)
	Address
	City, State, Zip Code



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Lloyd W. Newton	
	(Name of defendant) (as Member of	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
		ou (or the entity on whose behalfyou are addressed). A copy of the complaint is attached to this notice. It has trict Court for the Eastern District
of Mis	souri and has been assigned	docket number 4:05CV01387JCH
the cos of the w	t of serving you with a judicial summaiver within30days after the da	n from the court, but rather my request that you sign and return the enclosed waiver of service in order to save mons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy attedesignated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed ree return) for your use. An extra copy of the waiver is also attached for your records.
lf yo	u comply with this req	uest and return the signed waiver to the undersigned, it will be filed
with datet	the court and no summo e waiver is filed, except you will not	ins will be served on you. The action will then proceed as if you had been served on the be obligated to answer the complaint before 60 days from the date designated below as the date on which ys from that date if your address is not in any judicial district of the United States).
Rules of address	of Civil Procedure and will then, to	the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are vice. In that connection, please read the statement concerning the duty of parties to waive the service of the proof of the waiver form.
l affirn	n that this request is being se	ent to you on behalf of the plaintiff, this 3151 day of 100050 , 2005. Signature of Plaintiff's Attorney or Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who wakes service must within the time specified on the waker form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waking service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waker of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaint	NOTICE TO DEFENDANT(S) * * Plaintiff To Complete Gray Area * *		
10.	Paul Wilson P. O. Box 899 JEFFenson CITY, HISSOUL 65102 (Name of plaintiffs attorney or unrepresented plaintiff)		
I acknow	Medge receipt of your request that I waive service of a summons in the action of.		
	Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al		
	Case Number: 4:05CV01387JCH		
	ted States District Court forthe Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this ent, and a means by which I can return the signed waiver to you without cost to me.		
lagree to s behalf la	save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose am acting) be served with judicial process in the manner provided by Rule 4.		
I (or the er objection	ntity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for ns based on a defect in the summons or in the service of the summons.		
lunderstar upon you	nd that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served u within 60 days after <u>August</u> 30, 2005		
1000	(Date Waiver sent) 90 days after date if the request was sent outside the United States.		

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date	Print name	
	Signature	
as(Officer or Agent)	of (Corporation or Association)	
	Address	
	City, State, Zip Code	

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

W

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4:050V01387JCH

and serve:

Catherine T. Hanaway U.S. Attorney 111 South 10th St., 20th Floor St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

Lloyd W. Newton Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St., Ste. 600 Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General P. O. Box 899 Jefferson City, MO 65102

DATE

BET IN LO		
AO 440 (Rev. 10/93) Summons In a Civil Action RETURN OF SERVICE		
Service of the Summons and Complaint was made by m		
NAME OF SERVER (PRINT)	TITLE	
Check one box below to indicate appropriate method of service		
Served personally upon the defendant. Place where served:		
Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:		
Returned unexecuted:		
Other (specify):		
STATEMENT OF	SERVICE FEES	
TRAVEL SERVICES	TOTAL	
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on		
Executed on	tatement of Service Fees is true and correct.	
Executed on	tatement of Service Fees is true and correct. Signature of Server	

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General of the State of Missouri,) Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official)
capacity as Secretary of Defense of the)
United States; ANTHONY J. PRINCIPI,)
in his official capacity as Chairman of the)
Defense Base Closure and Realignment)
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.	
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as)
members of the Defense Base Closure and)
Realignment Commission,)
)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- 6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States
 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.
 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
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 (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time)
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- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
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- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents ... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL

Assistant Attorney General

Missouri Bar No. 41663

JOHN M. ROODHOUSE

Assistant Attorney General

Missouri Bar No. 56413

REX M. BURLISON

Assistant Attorney General Federal Bar No. 10869

P.O. Box 899

Jefferson City, Missouri 65102

Phone No. (573) 751-8851

Fax No. (573) 751-7094

Attorneys for Plaintiff



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Anthony J. Principi	
0.877	(Name of defendant) (as Ch.	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
		u(orthe entity on whose behalfyou are addressed). A copy of the complaint is attached to this notice. It has rict Court for the Eastern District
of Mis	souri and has been assigned	docket number 4:05CV01387JCH
the cos of the w envelo	st of serving you with a judicial summivalver within30days after the date ope (or other means of cost-fre	from the court, but rather my request that you sign and return the enclosed waiver of service in order to save ions and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy edesignated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed se return) for your use. An extra copy of the waiver is also attached for your records.
with dateth	the court and no summor ne waiver is filed, except you will not b	ns will be served on you. The action will then proceed as if you had been served on the be obligated to answer the complaint before 60 days from the date designated below as the date on which is from that date if your address is not in any judicial district of the United States).
Rules of address	of Civil Procedure and will then, to th	he time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal ne extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are ice. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
l affirm	n that this request is being sen	nt to you on behalf of the plaintiff, this day of Augus , 2005.

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Unrepresented Plaintiff

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, falls to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the

It is not good cause for a failure to wake service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

or unrepresented plaintiff) st that I waive service of a summons in the action of: 2. ex. rel. v. Donald Rumsfeld, et al 187JCH setem District of Missouri. I have also received a copy of the complaint in this action, two copies of this can return the signed waiver to you without cost to me.
st that I waive service of a summons in the action of: b. ex. rel. v. Donald Rumsfeld, et al setup. setup. setup. setup. setup. setup. setup. setup. setup. setup. setup. setup. setup. setup. setu
ex. rel. v. Donald Rumsfeld, et al 187JCH District of Missouri. I have also received a copy of the complaint in this action, two copies of this
в т јсн astern District of Missouri. I have also received a copy of the complaint in this action, two copies of this
astern District of Missouri. I have also received a copy of the complaint in this action, two copies of this
nons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose dicial process in the manner provided by Rule 4.
will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for summons or in the service of the summons.
d against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served st. 30, 2005
(Date Waiver sent) quest was sent outside the United States.
1

City, State, Zip Code



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Anthony J. Principi	
,	(Name of defendant)	of the Defense Base Closure and Relignment Comm.
	(Title)	(Name of business)
		you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has strict. Court, for the Eastern District.
of Mis	souri and has been assigne	ed docket number 4:05CV01387JCH
the co of they envel	stofserving you with a judicial sun valver within _30 _ days after the cope (or other means of cost-	on from the court, but rather my request that you sign and return the enclosed waiver of service in order to save inmons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy tate designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed free return) for your use. An extra copy of the waiver is also attached for your records.
		quest and return the signed waiver to the undersigned, it will be filed
//datet	ne waiver is filled, except you will no	ons will be served on you. The action will then proceed as if you had been served on the of the obligated to answer the complaint before 60 days from the date designated below as the date on which ays from that date if your address is not in any judicial district of the United States).
Rules addres	of Civil Procedure and will then, to	in the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal of the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are ervice. In that connection, please read the statement concerning the duty of parties to waive the service of the second form.
l affin	n that this request is being s	sent to you on behalf of the plaintiff, this 3 st day of August 2005. Signature of Plaintiff's Attorney or

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who walves service must within the time specified on the walver form serve on the piaintiff's attorney (or unrepresented piaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By walving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for walver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

Plaintili 10 Complete Gray Area	
To. Paul Wilson (Name of plaintiffs attorne	y or unrepresented plaintiff)
l acknowledge receipt of your requ	est that I waive service of a summons in the action of.
Case Caption: St. of	MO. ex. rel. v. Donald Rumsfeld,et al
Case Number: 4:05CV0	1387JCH
in the United States District Court for the instrument, and a means by which	Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this I can return the signed waiver to you without cost to me.
	nmons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose judicial process in the manner provided by Rule 4.
	ng) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for e summons or in the service of the summons.
	red against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served
	(Date Waiver sent)
or within 90 days after date if the	request was sent outside the United States.
DEFE	NDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature
as	of
(Officer or Agent)	(Corporation or Association)
	Address
	City, State, Zip Code

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

W

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4:050V01387JCH

and serve:

Catherine T. Hanaway U.S. Attorney 111 South 10th St., 20th Floor St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

Anthony J. Principi Ch. Def. Base Closure & Realignment Comm. 2521 S. Clark St. Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)
P. O. Box 899

JEREMIAH W. (JAY) NIXON Attorney General of Missouri Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General

an answer to the complaint which is herewith served upon you, within ________ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATE

BY DEPUTY CLERK

AO 440 (Rev. 10/93) Summons In a Civil Action		
RETU	JRN OF SERVICI	
Service of the Summons and Complaint was made	e by met	DATE
NAME OF SERVER (PRINT)		TITLE
Check one box below to indicate appropriate metho	od of service	
Served personally upon the defendant. Place v	where served:	
Left copies thereof at the defendant's dwelling he discretion then residing therein. Name of person with whom the summons and		
Returned unexecuted:		
Other (specify):		
STATEME	NT OF SERVICE F	EES
TRAVEL SERVICES		TOTAL
DECLAF	RATION OF SERVE	
I declare under penalty of perjury under information contained in the Return of Service	the laws of the Un	R Ited States of America that the foregoing
I declare under penalty of perjury under	the laws of the Un	R Ited States of America that the foregoing Service Fees Is true and correct.
I declare under penalty of perjury under information contained in the Return of Service Executed on	the laws of the Un and Statement of	R Ited States of America that the foregoing Service Fees is true and correct. If Server
I declare under penalty of perjury under information contained in the Return of Service Executed on	the laws of the Un and Statement of Signature o	R Ited States of America that the foregoing Service Fees is true and correct. If Server
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I declare under penalty of perjury under information contained in the Return of Service Executed on	the laws of the Un and Statement of Signature of Address of a	R Ited States of America that the foregoing Service Fees is true and correct. If Server

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.	
JEREMIAH W. (JAY) NIXON,	,
Attorney General of the State of Missouri,) Civil Action:
Plaintiff,)) 4: 05CV01387 JCH)
v.)
)
DONALD H. RUMSFELD, in his official	j
capacity as Secretary of Defense of the)
United States; ANTHONY J. PRINCIPI,)
in his official capacity as Chairman of the)
Defense Base Closure and Realignment)
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.)
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as)
members of the Defense Base Closure and)
Realignment Commission,)
)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States

 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.

 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel
 (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time)
 Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations.

 Since 1996, its deployments have included the following: Operation PROVIDE

 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL

Assistant Attorney General

Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General

Missouri Bar No. 56413

REX M. BURLISON

Assistant Attorney General

Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851

Fax No. (573) 751-7094

Attorneys for Plaintiff

EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Samuel K. Skinner	
	(Name of defendant) (as Member	of the Defense Base Closure and Realignment Commission)
	(as <u>Medider</u> (Title)	(Name of business)
8060 common d'illinois		(or the entity on whose behalfyou are addressed). A copy of the complaint is attached to this notice. It has ict Court for the Eastern District
of Mis	souri and has been assigned d	docket number 4:05CV01387JCH
the cost of the week of the cost of the week of the we	tofserving you with a judicial summo aiver within30days after the date ope (or other means of cost-free u comply with this reque the court and no summon e waiver is filed, except you will not be	om the court, but rather my request that you sign and return the enclosed waiver of service in order to save one and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy in designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed are return) for your use. An extra copy of the waiver is also attached for your records. The action will then proceed as if you had been served on the election of the date of the date of the United States).
Rules o	of Civil Procedure and will then, to the	ne time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal e extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are ce. In that connection, please read the statement concerning the duty of parties to waive the service of the cot of the waiver form.
l affirm	n that this request is being sent	t to you on behalf of the plaintiff, this 31 ⁵¹ day of AUGUST, 20 <u>05</u> . Signature of Plaintiff's Attorney or

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Unrepresented Plaintiff

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the recourst for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaintiff To Complete Gray Are	NOTICE TO DEFENDANT(S) ea * *
To: Paul Wilson P.o. (Name of plaintiffs attorned)	Box 899 DEFFERSON CIN , MISSOURI 65102 ey or unrepresented plaintiff)
I acknowledge receipt of your requ	uest that I waive service of a summons in the action of.
Case Caption: St. of	MO. ex. rel. v. Donald Rumsfeld, et al
Case Number: 4:05cv	01387JCH
in the United States District Court for the instrument, and a means by which	e Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this h I can return the signed waiver to you without cost to me.
	immons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose i judicial process in the manner provided by Rule 4.
I (or the entity on whose behalf I am action objections based on a defect in the	ing) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for ne summons or in the service of the summons.
i I understand that a judgment may be ente	ered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served
upon you within 60 days after Aug or within 90 days after date if the	(Date Waiver sent) e request was sent outside the United States.
	INDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature
as(Officer or Agent)	of(Corporation or Association)
	Address

City, State, Zip Code



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO	Samuel K. Skinner	
TO:	(Name of defendant) (as Member	of the Defense Base Closure and Realignment Commission
	(Title)	(Name of business)
		ou (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has trict Court for the Eastern District
of Mis	souri and has been assigned	docket number 4:05CV01387JCH
the cos of the v	t of serving you with a judicial summ aiver within30days after the dat	from the court, but rather my request that you sign and return the enclosed waiver of service in order to save nors and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy te designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed ree return) for your use. An extra copy of the waiver is also attached for your records.
If yo	u comply with this requ	uest and return the signed waiver to the undersigned, it will be filed
with datet	the court and no summo ne waiver is filed, except you will not	Ins will be served on you. The action will then proceed as if you had been served on the be obligated to answer the complaint before 60 days from the date designated below as the date on which ys from that date if your address is not in any judicial district of the United States).
Rules addres summ	of Civil Procedure and will then, to to sed) to pay the full costs of such servions, which is set forth on the	
l affin	n that this request is being se	ent to you on behalf of the plaintiff, this 3151 day of 100051. Signature of Plaintiff's Attorney or Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who walves service must within the time specified on the walver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By walving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for walver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S) * * Plaintiff To Complete Gray Area * *			
To:	Paul Wilson P.O. Box 899 DEFFERSON CIN, MISSOURI 65102 (Name of plaintiffs attorney or unrepresented plaintiff)		
1 ackn	owledge receipt of your request that I waive service of a summons in the action of.		
	Case Caption: St. of Mo. ex. rel. v. Donald Rumsfeld, et al		
	Case Number: 4:05CV01387JCH		
in the l	United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this ment, and a means by which I can return the signed waiver to you without cost to me.		
	to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose I I am acting) be served with judicial process in the manner provided by Rule 4.		
	e entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for ions based on a defect in the summons or in the service of the summons.		
lunder upon v	stand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served you within 60 days after August 30, 2005		
	(Date Waiver sent) nin 90 days after date if the request was sent outside the United States.		

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date	Print name
	Signature
as(Officer or Agent)	of(Corporation or Association)
	Address
	City, State, Zip Code

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

ν.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4:050V01387JCH

and serve

Catherine T. Hanaway U.S. Attorney 111 South 10th St., 20th Floor St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

Samuel K. Skinner Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St., Ste. 600 Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General P. O. Box 899 Jefferson City, MO 65102

an answer to the complaint which is herewith served upon you, within _______ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATE

BY DEPUTY CLERK

	RETURN OF SE	RVICE	
Service of the Summons and Complain	t was made by met	DATE	
NAME OF SERVER (PRINT)		TITLE	
Check one box below to Indicate approp	oriate method of service		
Served personally upon the defend	ant. Place where served	i:	
Left copies thereof at the defendant's discretion then residing therein. Name of person with whom the sur	-		a person of suitable age and
Returned unexecuted:			
Other (specify):			
	STATEMENT OF SERV	ICE FEES	
TRAVEL	ERVICES		TOTAL
4-	DECLARATION OF S	ERVER	
I declare under penalty of per information contained in the Return			
Executed on			
Date	Sign	ature of Server	
	-	ature of Server	
	-		
	-	ess of Server	
	Addr	ess of Server	
	Addr	ess of Server	
	Addr	ess of Server	
	Addr	ess of Server	
	Addr	ess of Server	
	Addr	ess of Server	

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON,)
Attorney General of the State of Missouri,) Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official capacity as Secretary of Defense of the United States; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment))))
Commission; JAMES H. BILBRAY; PHILIP E. COYLE; HAROLD W. GEHMAN, JR.; JAMES V. HANSEN;)))
JAMES T. HILL; LLOYD W. NEWTON; SAMUEL K. SKINNER; and SUE ELLEN TURNER, in their official capacity as)
members of the Defense Base Closure and Realignment Commission,))
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- 6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States

 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.

 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations.

 Since 1996, its deployments have included the following: Operation PROVIDE

 COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL

Assistant Attorney General Missouri Bar Nø, 41663

JOHN M. ROODHOUSE Assistant Attorney General

Missouri Bar No. 56413

REX M. BURLISON Assistant Attorney General Federal Bar No. 10869

P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO:	Sue Ellen Turner			
10.	(Name of defendant) (as Member	of the Defense Base Closure and Realignment Commission		
	(Title)	(Name of business)		
Alawsu been t	ithas been commenced against you illed in the United States Distr	I (or the entity on whose behalfyou are addressed). A copy of the complaint is attached to this notice. It has ict Court for the Eastern District		
of Mis	souri and has been assigned	docket number 4:05CV01387JCH		
the cos of the w envelo if you with	tofserving you with a judicial summaiver within 30 days after the date ope (or other means of cost-freu comply with this requithe court and no summore waiver is filed, except you will not be	from the court, but rather my request that you sign and return the endosed waiver of service in order to save one and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy edesignated below as the date on which this Notice and Request is sent. I endose a stamped and addressed ser return) for your use. An extra copy of the waiver is also attached for your records. The set and return the signed waiver to the undersigned, it will be filed the swill be served on you. The action will then proceed as if you had been served on the eobligated to answer the complaint before 60 days from the date designated below as the date on which is from that date if your address is not in any judicial district of the United States).		
If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.				
l affirn	n that this request is being ser	nt to you on behalf of the plaintiff, this day of Algorithms, 2005.		
		Signature of Plaintiffs Attorney or Unrepresented Plaintiff		

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the

It is not good cause for a failure to walve service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who walves service must within the time specified on the walver form serve on the plaintiff attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By walving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for walver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S) * * Plaintiff To Complete Gray Area * *		
To:	Paul Wilson (Name of plaintiff's attorney or unrepresented plaintiff)	
l ackn	cowledge receipt of your request that I waive service of a summons in the action of: Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al	
	Case Number: 4:05CV01387JCH	
	United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this ment, and a means by which I can return the signed waiver to you without cost to me.	
lagree behall	to save the cost of service of a summors and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose I am acting) be served with judicial process in the manner provided by Rule 4.	
	e entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for tions based on a defect in the summons or in the service of the summons.	
	stand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served you within 60 days after August 30, 2005	
	(Date Waiver sent) hin 90 days after date if the request was sent outside the United States.	

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date	Print name
	Signature
as(Officer or Agent)	of(Corporation or Association)
	Address
	City, State, Zip Code



EASTERN DISTRICT OF MISSOURI NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

	(Name of defendant)	
	(as <u>Member</u> (Title)	of the Defense Base Closure and Realignment Commission (Name of business)
		tyou (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has District Court for the Eastern District
of Misso	uri and has been assign	ed docket number 4:05CV01387JCH
the cost of of the waiv	serving you with a judicial su er within30days after the	ion from the court, but rather my request that you sign and return the enclosed walver of service in order to save mmons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy edate designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed t-free return) for your use. An extra copy of the waiver is also attached for your records.
with the	e court and no sumn vaiver is filed, except you will r	equest and return the signed waiver to the undersigned, it will be filed nons will be served on you. The action will then proceed as if you had been served on the other obligated to answer the complaint before 60 days from the date designated below as the date on which days from that date if your address is not in any judicial district of the United States).
Rules of C addressed	ivil Procedure and will then, i) to pay the full costs of such	hin the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are service. In that connection, please read the statement concerning the duty of parties to waive the service of the foot of the waiver form.
l affirm ti	nat this request is being	sent to you on behalf of the paintiff, this day of Action, 2005
		Signature of Plaintiff's Attorney or Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate insaving unnecessary costs of service of the summons and comptaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to walve service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an unproper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

* * Plaintiff To Complete Gray Area	NOTICE TO DEFENDANT(S)
To: Paul Wilson (Name of plaintiffs attorney	y or unrepresented plaintiff)
I acknowledge receipt of your requi	est that I waive service of a summons in the action of:
Case Caption: St. of M	MO. ex. rel. v. Donald Rumsfeld, et al
Case Number: 4:05cv01	1387JCH
	Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this I can return the signed waiver to you without cost to me.
	nmons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose judicial process in the manner provided by Rule 4.
I (or the entity on whose behalf I am acting	g) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for a summons or in the service of the summons.
lunderstandthat a judgment may be enter upon you within 60 days after Augu	red against me (orthe party on whose behalf I am acting) if an answer or motion under Rule 12 is not served ust 30, 2005
	(Date Waiver sent) request was sent outside the United States.
	IDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE
Date	Print name
	Signature
as(Officer or Agent)	of(Corporation or Association)
	Address

City, State, Zip Code

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON, Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v

DONALD H. RUMSFELD, et al.

BYLDEP

CASE NUMBER: 387JCH

and serve:

Catherine T. Hanaway U.S. Attorney 111 South 10th St., 20th Floor St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Alberto Gonzales Attorney General of the U.S. 950 Pennsylvania Ave., NW Washington, DC 20530-0001

Sue Ellen Turner Member of the Defense Base Closure and Realignment Commission, 2521 South Clark St., Ste. 600 Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON Attorney General of Missouri P. O. Box 899 Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804 Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663 Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869 Assistant Attorney General

DATE

AO 440 (Rev. 10/93) Summons in a Civil Action					
RETURN OF SERVICE					
Service of the Summons and Complaint was made by me	et DATE				
NAME OF SERVER (PRINT)	TITLE				
Check one box below to indicate appropriate method of se	prvice				
Served personally upon the defendant. Place where served:					
Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:					
Returned unexecuted:					
Other (specify):					
STATEMENT OF	SERVICE FEES				
TRAVEL	TOTAL				
DECLARATION	OF SERVER				
Information contained in the Return of Service and St	vs of the United States of America that the foregoing attement of Service Fees is true and correct.				
Executed on Date	Signature of Server				
	Address of Server				

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General of the State of Missouri,) Civil Action:
Plaintiff,) 4: 05CV01387 JCH
v.)
DONALD H. RUMSFELD, in his official)
capacity as Secretary of Defense of the)
United States; ANTHONY J. PRINCIPI,)
in his official capacity as Chairman of the)
Defense Base Closure and Realignment)
Commission; JAMES H. BILBRAY;)
PHILIP E. COYLE; HAROLD W.)
GEHMAN, JR.; JAMES V. HANSEN;)
JAMES T. HILL; LLOYD W. NEWTON;)
SAMUEL K. SKINNER; and SUE ELLEN)
TURNER, in their official capacity as)
members of the Defense Base Closure and)
Realignment Commission,)
Defendants.)

COMPLAINT SEEKING A DECLARATORY JUDGMENT AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

- 1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").
- 2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization with having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

- 3. The State of Missouri is the Plaintiff in this action.
- 4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.
- 5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.
- 6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.
- 7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.
- 8. This action arises under the "militia clause" of the United States

 Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C.

 § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.
- 9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

- 10. On May 13, 2005, Secretary Rumsfeld presented the Department ofDefense Base Closure and Realignment Report ("BRAC Report") to the Commission.
- 11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.
- 12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.
- 13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.
- 14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.
- 15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

- 16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.
 - 17. 1049 military positions are allotted to the 131st Fighter Wing.
- 18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.
- 19. 131th Fighter Wing personnel consist of 358 full-time support personnel
 (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time)
 Guard members, and 37 state employees.
- 20. The 131th Fighter Wing is a <u>state</u> military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.
- 21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.
- 22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

- 23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.
- 24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.
- 25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

- 26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.
- 27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.
- Recommendations that serve no purpose other than to move aircraft from one unit to another such as the recommendation for the Lambert Air Guard Station adopted by the Commission are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.
- 29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a "realignment." The BRAC Act does not authorize the Commission to realign a military installation unless there is a "reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed" at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.
- 30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

- 31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.
- 32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.
- Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents... an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."
- 34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

- 35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.
- 36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.
- 37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.
- 38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.
- 39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

- 41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.
- 42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.
- 43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

- 44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.
- 45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

- 47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.
- 48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and — if the State prevails on even one of these Counts — that the Court grant the following relief:

- A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and
- B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and
- C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

Louis's Lambert Airport.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON Attorney General of Missouri

PAUL C. WILSON Assistant Attorney General Missouri Bar No. 40804

DANIEL Y. HALL Assistant Attorney General Missouri Bar No. 41663

JOHN M. ROODHOUSE Assistant Attorney General Missouri Bar No. 56413

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P.O. Box 899 Jefferson City, Missouri 65102 Phone No. (573) 751-8851 Fax No. (573) 751-7094

Attorneys for Plaintiff